

05-40013 FDS

Albert S. Van Orman, plaintiff
v.

Civil Action
No.

Joseph McCarthy, defendant A

Paul S. Waickowski, defendant B

Parties

1. The plaintiff is now incarcerated in the Worcester County House of Correction and Jail.
2. The defendants are public servants who are employed in Worcester County, state of Massachusetts and are citizens of the United States.

Jurisdiction

3. This court has jurisdiction over this matter pursuant to Title 28 United States Code §§ 1332.

Facts

4. On or about, the thirteenth day of November two thousand one, the plaintiff who was unemployed at the time, had his wife and two children visiting from their second home in New York state.

On or about 1 o'clock p.m. on this day, the plaintiff's wife and two children left in an automobile on a trip back to New York state after a wellness visit at the University of Massachusetts Medical Center located in Shrewsbury, Massachusetts.

5. On or about 11^o clock on the thirteenth day of November two thousand one, the plaintiff's wife initiated a quasi-judicial, ex parte proceeding in the District Court of the said Town of Westborough, Massachusetts. The plaintiff, unaware of any criminal wrongdoing was being perjured for the express purpose of obtaining a restraining order against the plaintiff.
6. While the plaintiff was so engaged at his home in Shrewsbury, Massachusetts, the defendant A, without any warrant or authority of law, wrongfully, unlawfully, against the plaintiff's wish, without probable cause, arrested the plaintiff for allegedly assaulting the defendant A. This was during the defendant A's service of said granted restraining order.
7. The defendant A, wrongfully, unlawfully, and maliciously abused the plaintiff and after doing so, the plaintiff under restraint and above normal duress, remanded him to, and confined him to the Town of Shrewsbury, Massachusetts police station.
8. Shortly after said imprisonment and on the evening of said thirteenth day of November two thousand one, the defendant A, and his

8 cont. partner, the only members observed in said police station at the time, refused to set plaintiff at liberty, but wrongfully and unlawfully, detained said plaintiff and continued the imprisonment of plaintiff in the manner and place aforesaid.

9. The plaintiff remained under arrest until about nine o'clock a.m. of the fourteenth day of November two thousand one. The plaintiff was transported by van to the District Court of the said Town of Westborough to be arraigned. The plaintiff was assigned a court appointed attorney who questioned him briefly in the holding cell. The plaintiff was arraigned and remanded to the Worcester County House of Correction.

10. Thereafter, and on or about the fourth day of December two thousand one, the said action came on for a pre-trial hearing before Mr. Justice Paul S. Waickowski and after a lengthy (approx. 2 hrs.) open display of the plaintiff's adamance towards any type of plea deal other than a dismissal of charges or a trial by jury. After open court discussions with his assigned attorney, signed a form admitting guilt. This was done under duress and direct disregard of the plaintiff's wishes.

10 cont. By reason of the plaintiffs denial to Due Process, Right to a fair trial as provided for by the United States Constitution, despite his denial of the charges against him, Right to confront his accuser, with no evidence or open statement by the arresting officer the plaintiff was found guilty of all brought forth charges (Assault and Battery of a Police Officer, Resisting Arrest, and Disorderly Person, See Exhibit A) with not even a plea agreement of aforesaid charges.

11. In light of the plaintiffs solid work experience, lack of criminal history, the state of Massachusetts sentencing guidelines, the plaintiff was placed on one years straight probation by said Judge Paul S. Waickowski (Defendant B),

12. Thereafter, on the fourth day of December two thousand one, a probation order with no judicial intervention was generated. The order stated unreasonable conditions which would make the plaintiffs chance of a successful probation, impossible.

Cite People vs Brown 177 A.D. 2d 981, 578 N.Y.S. 2d 3 (4th Department 1991).

13. On or about the fifth day of December two thousand one, the plaintiff was informed on the previous day to come back to the District Court of said Town of Westborough for an Involuntary Commitment hearing (Sec. 123 M.G.L.). This hearing was held without probable cause, was maliciously ordered by parties unknown to the plaintiff. Again the plaintiff was denied his right to confront his accuser.

14. On or about the twenty first day of October, two thousand two, the plaintiff's probation for several alleged technical violations. The plaintiff's "full hearing" allowed an unfamiliar justice (Honorable Justice J. Corrard) to invoke a new sentence in lieu of a guilty finding of probation violations. The alleged technical probation violations supported the justice to reopen the case and invoke a sentence within the statutory provisions of any of the three guilty findings of the original criminal charges. (Cite state of Massachusetts Supreme Judicial Court adoption of Proceedings on Probation Violation Hearings, Rule 7, Massachusetts Criminal Practice).

Wherefore, the plaintiff demands judgement against the defendants for damages, relief from custody and such other relief as the court deems just.

Respectfully submitted,

Albert S. V. Jr
Albert S. Van Orman, Pro Se
Inmate ID 27844

NOTICE OF ASSIGNMENT
OF COUNSEL

C 855582-3

DATE OF ASSIGNMENT

NAME OF ASSIGNING JUDGE

Paul S. Waickowski, First Justice

NAME OF PERSON FOR WHOM COUNSEL ASSIGNED

Albert VanOrman, Mayflower Motel, Lenox, MA 01245

 Juvenile (J) Adult (A)

Language if not English

DOCKET
NO.

CRIMINAL CASES—ENTER OFFENSE CODE OR CHAPTER & SECTION WITH CHARGE

A 0167 CR 2327

265

13D

Assault and Battery on P.O.

B

268

32B

Resist ARrest

C

272

53

Disorderly Person

D

E

F

NEXT COURT DATE

3/10/04

INCARCERATION STATUS

 Released Not Released

Bail \$ _____ No Bail _____

 Serving Other Sentence Committed Not Applicable 1008 CHINS (c.119, §39F) 1009 Rogers 1010 Spring/Salkiewicz 1011 Probate Crim. Contempt 1012 Commitment of Alcoholics 1013 Housing Contempt 1014 Foster Care Review 1015 Elderly Abuse 1016 C&P (c.119, §§24, 29) 1017 Disabled Persons (c.19C, §7) Petition for Protective ServicesTHIS FORM IS NOT FOR GUARDIAN
AD LITEM ASSIGNMENTSPOST-TRIAL CRIMINAL CASES ONLY
PURPOSE OF ASSIGNMENT Appeals Court or SJC (A) Revise and Revoke (R) Sentence Appeal (S) New Trial Motion (N) Probation Surrender (P) Other (O)

INDIGENCY DETERMINATION

The court has found the above-named person

 Indigent

or

 Indigent but able to contribute \$ _____

The attorney or organization listed below is assigned to represent this person in this action.

CHECK ONE OF THE FOLLOWING:

 Public Defender Division

Local Office # 10

(See reverse side for address and telephone number.)

 Student Attorney under Rule 3:03 Attorney to be named by CPCs for Appeals Court/SJC/Murder Cases/
Rule 30 Motions/SDP Send to: CPCs44 Bromfield Street,
Boston, MA 02108 Assignment For Purpose of Bail Hearing, Bail Review or
Arraignment Only PRO BATION ATTORNEY

PLEASE PRINT

BBO#

REQUIRED

NAME

FIRST

MIDDLE

LAST

STREET

CITY

STATE

ZIP

TELEPHONE

CRIMINAL CASE INFORMATION CONTACT: BAR ADVOCATE PROGRAM NO. 13
(SEE REVERSE SIDE FOR ADDRESS AND TELEPHONE NUMBER.)

AUTHORIZED SIGNATURE

Paul S. Waickowski, First Justice
PRINT NAME

INSTRUCTIONS TO THE COURT

1. Forward white copy to Committee for Public Counsel Services, 44 Bromfield Street, Boston, MA 02108
2. Retain green copy for court file.
3. Remaining copies are color coded as follows: pink—client, blue—bar advocate program, goldenrod—attorney.

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of complaints or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

(a) PLAINTIFFS

Albert S. Van Orman

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)
(Only during incarceration)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
N/A

DEFENDANT'S OFFICE

Joseph McCarthy
P.O. BOX 28142 KOTONSKI

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

Worcester

I. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

1. U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2. U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Citizen of This State	<input type="checkbox"/> PTF	<input checked="" type="checkbox"/> DEF	PTF	DEF
Citizen of Another State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 5	<input type="checkbox"/> 5
			<input type="checkbox"/> 6	<input type="checkbox"/> 6

I. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veterans' Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395F) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWW/DIVW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 250 Tort Product Liability 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	Transferred from <input type="checkbox"/> 5 another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation Appeal to District Judge from <input type="checkbox"/> 7 Magistrate Judgment

ORIGIN

Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation
Appeal to District Judge from
 7 Magistrate Judgment

. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

False Arrest, False Imprisonment, Probable Cause, Due Process, Rights to confront accusers

. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: YES NO

. RELATED CASE(S) (See instructions):

JUDGE

DOCKET NUMBER

SIGNATURE OF ATTORNEY OF RECORD

OFFICE USE ONLY

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

04-43093

APPENDIX C LOCAL COVER SHEET

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY). VanOrman vs. McCarthy,
Wackowski, [REDACTED]

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION CENTRAL DIVISION WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME _____

ADDRESS _____

TELEPHONE NO. _____